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**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

In the Matter of

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

) GEN Docket No. 90-314  
) ET Docket No. 92-100  
)  
) RM-7140, RM-7175, RM-7617  
) RM-7618, RM-7760, RM-7782  
) RM-7860, RM-7977, RM-7978,  
) RM-7979, RM-7980  
)  
) PP-35 through PP-40, PP-79  
) through PP-85

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**COMMENTS AND RECOMMENDATIONS OF  
ESSENCE COMMUNICATIONS, INC.  
IN RESPONSE TO THE COMMISSION'S THIRD MEMORANDUM OPINION  
AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING**

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September 14, 1994

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## **INTRODUCTION**

Essence Communications, Inc. ("Essence"), through counsel, hereby files a response to the Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in the above proceeding. Essence, a designated entity, was a participant in the Federal Communication Commission's (Commission) auction for national narrowband Personal Communications Services (PCS) licenses. Essence Television Productions, Inc., a wholly-owned subsidiary of Essence Communications, Inc., was the actual applicant of record in the national narrowband PCS auction. Essence also plans to participate in the Regional Narrowband Auction on October 26, 1994, as well as in future Broadband PCS auctions.

## **ESSENCE**

Founded nearly 25 years ago, Essence is one of the country's leading minority-owned enterprises, currently ranking in the top 20 of "Black Enterprise Top 100 Companies". Essence publishes a monthly magazine, Essence, with a circulation of approximately one million subscribers. Essence publishes another monthly magazine entitled Income Opportunities, which has over four hundred thousand readers and focuses on entrepreneurial opportunities in emerging technology. From 1984 to 1988, Essence produced a nationally syndicated, weekly television show hosted by Susan Taylor, and for the past seven years has hosted and produced a two hour prime-time network televised awards special profiling prominent entertainers and leaders in the African-American community. Essence is currently in pre-production for a national television special to air July 1995 in celebration of the 25th anniversary of its founding. Essence, a

privately-owned company, has nearly 100 employees and has offices in New York, Atlanta, Chicago and Los Angeles.

Among its shareholders and board of directors are: Ed Lewis, Clarence Smith, Camille Cosby, J. Bruce Llewellyn, Frank Savage, Jim Dowdy, Maxine Waters and Nat Lehrman. Many of these individuals have ownership interests and experience in owning and operating television and cable properties. (See attached ownership information on Essence.)

## **BACKGROUND**

### **I. Recent experience demonstrates that the Commission must do more to promote minority ownership of PCS.**

Essence sought to expand its involvement in telecommunications by bidding in the national narrowband PCS auction on July 24, 1994. Essence participated in 23 rounds of the auction, lead the bidding for six rounds, and was the last designated entity to withdraw from the bidding. Ultimately, like all other designated entities participating, Essence did not obtain a license in any of the ten blocks (including the three that offered bidding credits), because non-designated entities substantially outbid them.

As a result, the Commission, in its Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,<sup>1</sup> recognized that it was necessary to do more to ensure that designated entities have a meaningful opportunity to successfully compete in the narrowband PCS auctions and the development of the overall industry. In the Order, the Commission acknowledged its faulty assumption that narrowband PCS would involve relatively low capital

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<sup>1</sup>Third Memorandum Opinion and Order and Further Notice of Rulemaking in PP Docket No. 93-253, FCC 94-219, 9 FCC Rcd. \_\_\_\_\_, released August 17, 1994.

entry requirements,<sup>2</sup> and reiterated its commitment to "continue to assess the effectiveness of measures adopted for narrowband PCS", and to "apply any knowledge gained to subsequent auctions."<sup>3</sup>

Congress recently authorized the Federal Communications Commission to employ competitive bidding procedures in issuing initial licenses for the use of the electromagnetic spectrum.<sup>4</sup> Specifically, Congress added a new section, 47 U.S.C. § 309(j)(1), under which "the Commission shall have the authority . . . to grant [licenses] through the use of a system of competitive bidding. . . ." if the bidding system meets certain conditions. With this Act, Congress altered its fifty-year tradition of requiring the Commission to conduct comparative hearings and lotteries in allocating new licenses.

This summer, the nation watched as ten country-wide licenses went up for bid at the first auction and all ten reaped prices more than ten-fold what the federal government had expected.<sup>5</sup> Some of the nation's largest telecommunications companies were winners at the auction: Paging Network, Inc. (three licenses), McCaw Cellular Communications, Inc. (two), Mobile Telecommunications Technology Corp. (one), BellSouth Wireless (one), Airtouch Paging (one) and Pagemart II, Inc. (one). Meanwhile, small businesses and minority- and women-owned companies were left empty-handed.

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<sup>2</sup>Id. at ¶40.

<sup>3</sup>Id.

<sup>4</sup>Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 387-88, amending Communications Act of 1934 (codified as amended at 47 U.S.C. §§ 151 et seq.).

<sup>5</sup>The ten national narrowband licenses were purchased for \$617 million, at an average of over \$60 million per license. Mike Mills, "High Bids Surprise at Auction of Paging Licenses", The Washington Post, July 30, 1994 at A1. The Congressional Budget Office originally predicted an auction price of approximately \$6 million per national license.

In this filing, Essence requests the Commission to institute the measures recommended below not only for future auctions, but immediately for the upcoming regional/narrowband auctions as well. Instituting changes immediately has the practical advantage of reducing uncertainty as to how future auctions will proceed. At this point, designated entities cannot develop an ordered bidding strategy on regional narrowband PCS because they do not know what conditions will exist for later narrowband auctions particularly in light of the Commission's proposal to reserve spectrum blocks for designated entities. Designated entities will find it difficult to distribute admittedly limited resources among the various licenses and auctions. Knowing what it now knows as a result of the July 1994 auctions, the Commission should implement the following changes immediately:

1. Modify the definition of "minority-owned business" to include firms with a maximum gross revenue of \$75 million for the purpose of making them eligible for the installment payment program; and
2. Establish the "entrepreneurs' blocks", already contemplated for broadband PCS, for the October 1994 Regional Narrowband auction.

Now, before the Commission proceeds any further with the competitive bidding policy, it is time to fine tune the rules and regulations for the upcoming auctions to ensure that such the Congressional intent of §309(j)(1) is achieved and licenses are issued in an equitable and efficient manner.

## **II. Past Commission Practices To Encourage Minority Ownership Have Fallen Woefully Short, Particularly In The High Technology Industries.**

Historically, the Commission has awarded licenses after conducting comparative hearings or lotteries. In theory, these procedures contributed to a fair allocation of licenses and diversity in ownership. Indeed, since 1965, diversity of control has been one factor considered in a comparative hearing. See Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393, 394-95 (1965). Since 1978, minority ownership and participation has been considered an automatic "plus" at a comparative hearing. See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C. 2d 979, 982-83 (1978). The Commission has weighed such other factors as integration of management-ownership, proposed program service, efficient use of frequency and character of applicant, rather than the applicant's bidding power. See Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393, 395-99 (1965). Further, applicants paid minimal fees in order to be considered. The applicants' bidding power has never been a factor at all. This system established conditions under which, at least in theory, minorities could excel because of the importance placed on diversity.

Of course, the fairness of these procedures was undermined because, as the Commission itself has noted, "undisguised discrimination in education, employment opportunities, and access to capital excluded minorities from all but token participation."<sup>6</sup> "Discrimination" is too antiseptic and tame a word given the real and dramatically exclusive impact. From the very beginning majority-owned firms have been given essentially free licenses (which initially were also the most valuable licenses), and minority-owned firms have been virtually shut out. In

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<sup>6</sup>Third Report and Order in PP Docket No. 93-253, FCC No. 94-98, 9 FCC Rcd. 2941 (1994), at ¶75 (quoting Report of the FCC Small Business Advisory Committee, reprinted at 8 F.C.C. Rcd. 7820, 7827, 7828 (1993)).

1971, minorities owned only 10 of approximately 7500 radio stations in the country, and none of the more than 1000 television stations. See, Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 553 (1990)(citations omitted). In 1978, minorities owned less than 1% of this Nation's radio and television stations, and by 1986 minorities owned only 2.1% of stations in the United States. Id. By 1993, only 2.7% of commercial broadcast stations were owned by minorities. Fifth Report and Order in PP Docket No. 93-253, F.C.C. No. 94-178, 9 F.C.C. Rcd. \_\_\_\_\_ (1994), released July 15, 1994, at ¶ 107. Meanwhile, roughly one-fifth of the nation's population has been and is comprised of minorities. These startling figures are cause for concern and reason for action.

Despite Congressional and Commission efforts to bring practice more in line with theory, minority-owned firms remain nearly absent from the telecommunications field. The Commission's first efforts to enhance minority involvement in broadcasting consisted of enforcing nondiscriminatory employment policies against licensees. See Metro Broadcasting, 497 U.S. at 554 and n. 3 and citations therein. These rules forbade discrimination in hiring, mandated reporting of hiring and promotion statistics, and forced implementation of affirmative action programs. The FCC's equal employment opportunity rules addressed a specific need for greater diversity in programming, but did not reach the crucial issue of diversity in ownership.

In its 1978 Statement of Policy on Minority Ownership, the Commission instituted two programs which directly impacted minority ownership: (1) the "plus" policy for comparative hearings and (2) the "distress sale" policy. Under the "plus" policy, minority ownership became a significant advantage at a comparative hearing because it provided an automatic weighing in the minority applicant's favor. 68 F.C.C. 2d at 982. This furnished greater incentive to

minorities to apply for licenses, and thus encouraged greater minority ownership. Alternatively, under the "distress sale" policy, the Commission removed procedural barriers to license transfers by potentially unqualified licensees only when the purchaser was a minority-owned and controlled company. *Id.* at 983. In addition, the negotiated price had to be no more than 75% of the fair market value. Both of these policies have survived constitutional challenge and were founded by the Supreme Court to be valid procedures to promote diversity in ownership. *See, e.g., Metro Broadcasting, Inc. v. F.C.C.*, 497 U.S. 547 (1990) (decided together with *Astroline Communications Company Limited Partnership v. Shurberg Broadcasting of Hartford, Inc.*) Although these policies are valid, their effectiveness has been limited. Less than 3% of the broadcast stations in the country are minority-owned. Therefore, much more needs to be done to open the vaults for financing to minority entrepreneurs in the telecommunication industry, because "financing is the fuel that powers the engine down the information Super Highway". *The Information Superhighway: What Does it Mean for African America?*, "Class Magazine", August 1994 at p.44.

Broader Congressional initiatives which are not specifically aimed at the communications field but which attempt to address generally the barriers of access to capital have also fallen short of achieving meaningful change in improving minority business opportunities. For example, in 1976, Congress passed the Equal Credit Opportunity Act ("ECOA") Amendments, Pub. L. No. 94-239, 90 Stat. 251 (codified as amended at 15 U.S.C. § 1691 et seq.) The ECOA imposes a federal ban on race-based denials of extension of credit. 15 U.S.C. § 1691(a)(1). Although codified among consumer credit statutes, ECOA's ban encompasses business as well as consumer credit. S. Rep. No. 589, 94th Cong., 2d Sess.3 (1976), reprinted in 1976 U.S.C.C.A.N. 403, 405 ("Credit has ceased to be a luxury item either for consumers



or for business entrepreneurs.") The Senate Banking, Housing, and Urban Affairs Committee recognized differences between consumer and business credit. Nonetheless, it was emphatic in including all types of business credit under the prohibition, and limiting the scope of potentially necessary exemptions. *Id.* at 10-11. ("The purpose of the Amendment is to narrow the scope of the exemption authority. . . Congress does not intend to deny the anti-discrimination protections of the Act to minorities. . . who encounter problems of discrimination in obtaining credit to establish businesses"). In addition, past instances of discrimination against racial minorities were cited in the record.

Notwithstanding the erection of this bulwark against discrimination in financing, and the provision of a private remedy for aggrieved individuals, the rule has had limited success in reducing the barriers to entry for minority entrepreneurs to capital markets. See also, Home Mortgage Disclosure Act: Joint Hearings Before the Subcommittees on Consumer Affairs and Housing and Community Development, 102nd Cong., 2d Sess. (1992)(Comments of Office of the Comptroller of the Currency)("after thorough inquiries, we have learned of no enforcement agency, advocacy organization, or private litigant that has prevailed in recent years in an adjudication . . . alleging racial discrimination in residential lending."). Far from being evidence of decreasing discrimination, the lack of case law on this issue is testament to the fact that discrimination is difficult to show in individual cases, especially in the business context where more subjective decisions are made.

Another far-reaching Congressional initiative, the Community Reinvestment Act ("CRA"), Pub. L. No. 95-128, 91 Stat. 1147 (1977)(codified as amended at 12 U.S.C. § 2901 et seq.), addresses racial discrimination in lending practices. The CRA requires each financial

institution to demonstrate service (both credit and deposit) to the entire community in which it is chartered including low and moderate income neighborhoods. 12 U.S.C. § 2901(a). Evaluations are conducted by federal regulators under 12 U.S.C. §§ 2903 and 2906. Institutions are assigned ratings, which are published, to characterize how well the community's needs are served. 12 U.S.C. §2906. The original version of the CRA contains no language that focuses explicitly on race as an important factor in lending patterns; however, by focusing on poorer neighborhoods, that is the practical result.

Recently, Congress made the implicit goal of the CRA explicit by amending it to bolster the evaluations of financial institutions which subsidize minority banks in predominantly minority areas. Resolution Trust Corporation Refinancing, Restructuring and Improvement Act, Pub. L. No. 102-233, § 302, 105 Stat. 1761 (1991)(codified as amended at 12 U.S.C. § 2907), amended by Housing and Community Development Act, Pub. L. No. 102-550, § 909, 106 Stat. 3874 (1992). No income level controls this aspect of the CRA. It is entirely race-conscious. The CRA as a whole is now accepted as an anti-discrimination measure.<sup>7</sup>

Moreover, as demonstrated by the hearings held by awareness that a pervasive problem still exists with respect to minority access to credit and capital is widespread.<sup>8</sup>

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<sup>7</sup>See Paul H. Schieber, "CRA Update," 110 Banking L.J. 62, 62 (1993)(CRA "adopted . . . to address the problems faced by minorit[ies]"); Allen J. Fishbein, "The CRA After Fifteen Years: It Works But Strengthened Federal Enforcement is Needed," 20 Fordham Urb. L.J. 293, 293 (1993)(CRA "adopted . . . to curb redlining" defined as discriminatory lending based on racial composition of area).

<sup>8</sup>See Access to Credit in "Distressed" Communities: Hearings Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business, 103rd Cong., 1st Sess. 33 (1993); Discrimination in Surety Bonding: Hearings Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business, 103rd Cong., 1st Sess. 36 (1993); Minority Entrepreneurs' Quest to Obtain Financing: Hearings Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business, 103rd Cong., 1st Sess. 57 (1993); Discrimination in the Telecommunications Industry: Hearings Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business, 103rd Cong., 2nd Sess. (May 20, 1994).

### **III. Applying Lessons Learned**

These failures teach that Congress and the Commission must continue in their efforts to advance minority ownership. Now that Congress has broken from traditional methods of issuing licenses and moved to the purely capital money-driven system of auctions without fully rectifying the racial imbalance in access to financing (particularly access to the magnitude of financing required to compete in the PCS auction), it is even more important to advance the principle of ownership diversity by protecting and advancing the ability of minorities to obtain licenses.

Congress has provided ample means for the Commission to implement this principle. Congress specifically conditioned the use of a competitive bidding system on "disseminat[ion] [of] licenses among a wide variety of applicants including small businesses, rural telephone companies, and businesses owned by members of minority groups and women . . ."<sup>9</sup> Further, Congress directs the Commission to "ensure that small businesses, rural telephone companies, and businesses owned by minorities and women are given the opportunity to participate in the provision of spectrum-based services. . .".<sup>10</sup> Importantly, Congress specified that these groups be guaranteed opportunities to provide telecommunications services and not merely to participate in the bidding process.

The Commission's conclusion that bidding credits are "the most cost-effective and efficient means of achieving Congress' objective . . ."<sup>11</sup> is mistaken. As demonstrated by the

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<sup>9</sup>Communications Act of 1934, §§309(j)(2)(B) and (j)(3), (codified as amended at 47 U.S.C. § 309(j)(2)(B) and (j)(3)).

<sup>10</sup>Communications Act of 1934, §309(j)(3) (codified as amended at 47 U.S.C. § 309(j)(3))

<sup>11</sup>Third Report and Order at ¶72.

July 1994 auction, bidding credits do not and cannot sufficiently address financing obstacles nor provide a competitive advantage with regard to the national licenses.

## **RECOMMENDATIONS**

### **1. Activate Reservation Blocks Now.**

Essence believes that, while the recent increase in the bidding credit to 40% represents a favorable step toward effective policy, the bidding credit alone is not the best means of achieving diversity. Essence encourages the Commission to activate immediately the "entrepreneurs' blocks" for the upcoming regional narrowband auctions. Since competitive bidding puts a premium on access to capital, only entrepreneurs' blocks will produce Congress' desired effect. By allowing designated entities to compete amongst themselves for particular licenses, the Commission ensures at least some diversity in ownership.

In the Fifth Report and Order, at ¶¶ 118-121, the Commission has already agreed that "small entities stand little chance of acquiring licenses in broadband auctions if required to bid against existing large companies. . . ." Given the advantages enjoyed by established companies, namely, availability of capital, established infrastructure, and strategic positioning, the Commission has already acknowledged that large firms have the means, and a reason, to outbid others in broadband auctions at almost any cost. Id. To carry out Congress' directive, the Commission has logically concluded that reservation blocks are necessary. Id. at ¶ 121.

Essence believes that the same rationale is applicable to narrowband auctions. All of the same advantages which large companies maintain in the broadband context work to exclude small and minority firms in the narrowband context as well. Even if narrowband licenses draw lower

bids than broadband licenses, large, majority-owned companies can still utilize greater access to capital to raise their bids. In any case, the assumption that narrowband licenses do not present the high barriers that broadband licenses present in terms of initial outlays is erroneous. It was proved erroneous in the July 1994 auction, and the Commission acknowledges this.<sup>12</sup> Because narrowband licenses were auctioned at prices originally expected for broadband licenses, any rules affecting designated entities in broadband auctions should rightly be applied in the narrowband auctions. For broadband, still further changes might be made.

The Commission has established two "entrepreneurs' blocks" for broadband in which large companies will be prohibited from bidding. There is still time to establish "entrepreneurs' blocks" in narrowband. Further, the Commission has promised to apply new knowledge to subsequent auctions and thus, is obligated to consider this option.<sup>13</sup>

## 2. Modify Definition of Minority-Owned Business.

Essence believes that the Commission should use a definition of minority-owned business which includes firms with up to \$75 million in gross revenues. The definition of "minority-owned business" should have been modified upwards commensurate with the unexpectedly high bidding in the July auction.

The original definition included all firms with a net worth of \$6 million or less, or a net income of \$2 million or less. As the Chief Counsel for Advocacy of the U.S. Small Business Administration explained, however, this net worth/net income test "will not include businesses

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<sup>12</sup>Third Memorandum Opinion and Order at ¶40. (quote)

<sup>13</sup>Id.

of sufficient size to survive, much less succeed, in the competitive wireless communication marketplace." Comments, November 10, 1993, p.9. The SBA recommended a gross revenue test and believed that a small business in the telecommunications field should have no more than \$40 million in gross revenue. Nevertheless, the Commission adopted the net worth/net income test. Second Report and Order at ¶ 271.

After the July 1994 auction, however, the Commission realized that the cost of acquiring a narrowband PCS license is significant. Third Memorandum Opinion and Order at ¶ 44. Many other observers were surprised by the high bids.<sup>14</sup> Presumably, the SBA was startled as well. The Commission returned to the issue of defining small business and chose the \$40 million gross revenue test. Third Memorandum Opinion and Order at ¶46. By that point, however, this was an outdated measure. By returning to pre-auction materials for a "new" or "revised" definition, the Commission has not adequately examined this issue.

For an appropriate definition of minority-owned business which takes the new circumstances into account, the Commission need not look further than its issuances since the July auctions. The Commission has recommended "entrepreneurs' blocks" to reserve particular MTA and BTA narrowband licenses and set a maximum of \$125 million in gross revenues for companies to qualify.<sup>15</sup> According to the Commission, the maximum "exclud[es] the large companies that would easily be able to outbid designated entities and frustrate Congress's goal of disseminating licenses among a diversity of licenses. . . ." Third Memorandum Opinion and

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<sup>14</sup>See, e.g., Teresa Riordan, "FCC's Auction Draws Rich Bids: The Audience Gasps at Airwaves Sale," N.Y. Times, July 26, 1994 at D1; Mike Mills, "High Bids Surprise at Auction of Paging Licenses," Wash. Post, July 30, 1994, at A1.

<sup>15</sup>Third Memorandum Opinion and Order at ¶74.

Order at ¶ 83. This rationale can be applied to the regional narrowband auction, if not to create a reservation block, then to isolate the companies that are eligible for and can use other enhancements such as installment financing. Increasing the maximum from \$40 million to \$75 million in gross revenues would work to attract those companies that experience difficulty obtaining financing and capital, but which are sufficiently large to compete and survive in the PCS market.

Funds necessary to pay the high cost of a license are especially difficult to raise because licenses have proven to be "non-assets" for the purposes of financing. Bidders cannot borrow against funds used to purchase the license because of the transfer restrictions placed on them by the Commission. Minority-owned companies are faced not only with the high cost of a license but also the high cost of buildout, estimates for which run as high as 75% of the total. Giving only very small companies an enhancement for an expensive project is thus not logical because the enhancement cannot be used effectively. Thus, the importance of providing bid credits and enhancements to companies large enough to use a license effectively is heightened. For these reasons, Essence recommends and urges that the Commission modify the definition of "minority-owned business" to include firms with up to \$75 million in gross revenues.

In the alternative, Essence requests that the Commission clarify its definition of gross revenues. First, gross revenues should not include commissions and discounts that never pass through a business' account. For example, advertisers in magazines receive a discounted rate for using more page space. As a particular advertiser purchases more space, the publisher receives a lower fee per page. Also, a portion of the fee is paid as a commission directly to advertising agencies who act as brokers. This is revenue for the ad agency. In addition, both

retail and national distributors receive a portion of the magazine's listed price as payment for their services. This is revenue for the distributor. Long-term subscribers regularly pay a lot less than the magazine's listed price. None of these amounts should be counted towards gross revenues of an applicant. Second, accounts receivable should not be included in gross revenues. Again, none of these funds have passed through the applicant's account so long as they remain unpaid.

These issues will arise in assessing gross revenue of any broadcast, radio or other media company. The Commission should be sure to estimate the gross revenues of any applicant seeking designated entity status in a conservative manner.

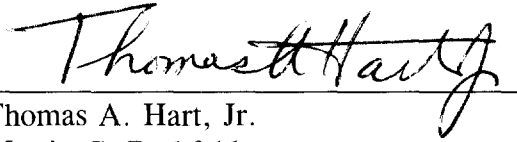
### **CONCLUSION**

The lessons of the past -- including the recent experience of the auction of narrowband licenses -- provide compelling evidence that shows the necessity of immediate changes to enhance the ability of minority-owned businesses to succeed in obtaining PCS licenses in the auction process. Specifically, the Commission should modify the definition of "minority-owned business" to include firms with up to \$75 million in gross revenues for the purpose of the installment payment option. Second, the Commission should activate the entrepreneurs' blocks,



already contemplated for broadband PCS, in the October 1994 Regional Narrowband PCS auction, and in all subsequent PCS auctions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas A. Hart, Jr.", written over a horizontal line.

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Counsel for Essence Communications, Inc.

September 14, 1994

**ESSENCE COMMUNICATIONS, INC.**  
**STOCKHOLDERS OF RECORD**  
**MAY 6, 1994**

		NUMBER OF SHARES					
	<u>NAME</u>	<u>Class A</u>		<u>Class B</u>		<u>Total</u>	
		#	%	#	%	#	%
1.	Camille O. Cosby 243 East 61st Street New York, NY 10021	12,561	4.686	69,026	28.639	81,587	16.027
2.	East Coast Development Corp. c/o James Dowdy, President 253 West 138th Street New York, NY 10030	-	-	25,000	10.373	25,000	4.911
3.	ECI Employee Stock Ownership Trust 1500 Broadway New York, NY 10036	35,600	13.282	-	-	35,600	6.993
4.	Johnson Publishing Co., Inc. 820 S. Michigan Avenue Chicago, IL 60605 Attention: John H. Johnson	36,427	13.591	77,485	32.148	113,912	22.377
5.	Edward Lewis 40 West 86th Street New York, NY 10025	71,075	26.517	6,643	2.756	77,718	15.267
6.	J. Bruce Llewellyn 300 Central Park West, #17D New York, NY 10024	5,678	2.118	13,285	5.512	18,963	3.725
7.	J.P. Morgan Capital Corp. 60 Wall Street New York, NY 10260 Attn: Ms. Willa F.H. Berghuis	-	-	13,300	5.518	13,300	2.613
8.	Clarence O. Smith 5900 Arlington Avenue Apartment 17J Riverdale, NY 10471	69,675	25.995	4,981	2.067	74,656	14.665
9.	TSG Ventures Inc. 1055 Washington Blvd. 10th Floor Stamford, CT 06901 Attn: Duane Hill	-	-	14,125	5.860	14,125	2.775
	<b>TOTALS</b>	293,010.00	62,080.19	285,839.00	62,086.87	516,855.00	62,083.35

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PAGE 1

State of Delaware



## Office of Secretary of State

I, GLENN C. KENTON, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF ESSENCE TELEVISION PRODUCTIONS, INC. FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF JULY, A.D. 1984, AT 9 O'CLOCK A.M.

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July 25 A.D. 1984

Robert J. Donaway  
RECORDER

**RECORDER**

Wm C. K. K.

Glenn C. Kanton, Secretary of State

**AUTHENTICATION:**

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DATE:

07/24/1984

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## CERTIFICATE OF INCORPORATION

OF

ESSENCE TELEVISION PRODUCTIONS, INC.

*Alan C. Kufon*  
SECRETARY OF STATE

The undersigned, being of legal age, in order to form a corporation under and pursuant to the laws of the State of Delaware, does hereby set forth as follows:

FIRST: The name of the corporation is  
ESSENCE TELEVISION PRODUCTIONS, INC.

SECOND: The address of the initial principal office and registered agent in this state is c/o United Corporate Services, Inc., 410 South State Street, in the City of Dover, County of Kent, State of Delaware 19901 and the name of the registered agent at said address is United Corporate Services, Inc..

THIRD: The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the corporation laws of the State of Delaware.

FOURTH: The corporation shall be authorized to issue the following shares:

<u>Class</u>	<u>Number of Shares</u>	<u>Par Value</u>
COMMON	5,000	\$ .10

FIFTH: The name and address of the incorporator are as follows:

NAMEADDRESS

Ray A. Barr

9 East 40th Street  
New York, New York 10016

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**SIXTH:** The following provisions are inserted for the management of the business and for the conduct of the affairs of the corporation, and for further definition, limitation and regulation of the powers of the corporation and of its directors and stockholders:

(1) The number of directors of the corporation shall be such as from time to time shall be fixed by, or in the manner provided in the by-laws. Election of directors need not be by ballot unless the by-laws so provide.

(2) The Board of Directors shall have power without the assent or vote of the stockholders:

(a) To make, alter, amend, change, add to or repeal the By-Laws of the corporation; to fix and vary the amount to be reserved for any proper purpose; to authorize and cause to be executed mortgages and liens upon all or any part of the property of the corporation; to determine the use and disposition of any surplus or net profits; and to fix the times for the declaration and payment of dividends.

(b) To determine from time to time whether, and to what times and places, and under what conditions the accounts and books of the corporation (other than the stockledger) or any of them, shall be open to the inspection of the stockholders.

(3) The directors in their discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the stock of the corporation which is represented in person or by proxy at such meeting and entitled to vote thereat (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation, whether or not the contract or act would otherwise be open to legal attack because of directors' interest, or for any other reason.

(4) In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the corporation; subject, nevertheless, to the provisions of the statutes of Delaware, of this certificate, and to any by-laws from time to time made by the stockholders; provided, however, that no by-laws so made shall invalidate any prior act of the directors which would have been valid if such by-law had not been made.

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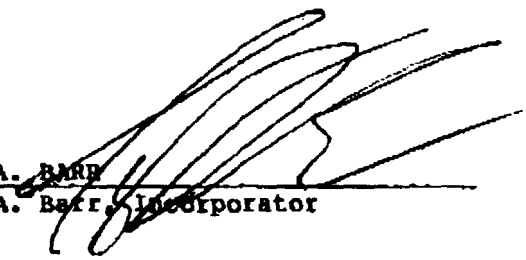
SEVENTH: The corporation shall, to the full extent permitted by section 145 of the Delaware General Corporation Law, as amended, from time to time, indemnify all persons whom it may indemnify pursuant thereto.

EIGHTH: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware, may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 279 Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

NINTH: The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation in the manner now or hereafter prescribed by law, and all rights and powers conferred herein on stockholders, directors and officers are subject to this reserved power.

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IN WITNESS WHEREOF, the undersigned hereby executes this document and affirms that the facts set forth herein are true under the penalties of perjury this twenty-third day of July, 1984.



RAY A. BARR  
Ray A. Barr, Incorporator

STATEMENT OF ORGANIZATION  
BY THE SOLE INCORPORATOR  
OF  
ESSENCE TELEVISION PRODUCTIONS, INC.

I, the undersigned, as sole incorporator of ESSENCE TELEVISION PRODUCTIONS, INC., do hereby make the following statements to organize the corporation:

FIRST: The name of the corporation is  
ESSENCE TELEVISION PRODUCTIONS, INC.

SECOND: The Certificate of Incorporation was duly filed in the office of the Secretary of State of Delaware on the twenty-fourth day of July, 1984 and a certified copy thereof was forwarded for recordation with the Recorder of Deeds of the county in which the registered office of the corporation is located.

THIRD: The By-Laws which are annexed hereto are hereby adopted as the By-Laws of the corporation for the regulation of its affairs.

FOURTH: Ray A. Barr is designated as Attorney-in-fact to execute the Application for Authority to do business in the State(s) of New York.

FIFTH: The following named person(s) shall constitute the first Board of Directors, who shall hold office until the first annual shareholders' meeting or until successors are elected and qualify:

Edward Lewis  
Clarence O. Smith  
Jagdish Chopra

I hereby execute the Statement as sole incorporator this 25th day of July, 1984.

  
Ray A. Barr, Sole Incorporator



Written Consent  
in Lieu of  
First Meeting of Directors  
of  
ESSENCE TELEVISION PRODUCTIONS, INC.

The undersigned, being the directors of ESSENCE TELEVISION PRODUCTIONS, INC., a Delaware corporation (the "Corporation"), pursuant to Section 141(f) of the General Corporation Law of the State of Delaware do hereby consent to the adoption of the following resolutions and to the taking of any and all actions required or permitted thereby:

1. RESOLVED, that the By-Laws annexed hereto as Exhibit A be, and they hereby are, in all respects approved and adopted as and for the By-Laws of the Corporation.

2. RESOLVED, that the following persons are elected to the offices set forth opposite their respective names below, each to serve in accordance with the By-Laws until their successors are elected and qualified:

<u>Name</u>	<u>Office</u>
Clarence O. Smith	Chairman of the Board and President
Edward Lewis	Vice President and Secretary/Treasurer
Jagdish Chopra	Assistant Secretary/ Assistant Treasurer

3. RESOLVED, that the seals described in the By-Laws containing the name of the Corporation and the words and figures "Corporate Seal - 1984" and "OFFICIAL CORPORATE SEAL" be, and the same hereby are, approved and adopted as the corporate seals of the Corporation, and that an impression of each of said seals be made in the margin of this instrument.